

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

KEITH RUSSELL JUDD,

Plaintiff,

v.

Case No. 2:11-cv-00369

SECRETARY OF STATE OF WEST VIRGINIA

and

STATE OF WEST VIRGINIA,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On May 23, 2011, the plaintiff, an inmate at FCI Texarkana, TX, filed a Complaint, alleging that he is being denied his right to vote and to be placed on the ballot as a candidate for the office of President of the United States. (ECF No. 2). By Order entered May 25, 2011 (ECF No. 4), the Court noted that the plaintiff had neither paid the filing fee of \$350 nor properly applied to proceed without prepayment of fees and costs. Accordingly, it was **ORDERED** that the plaintiff, within fourteen days, either pay the \$350 fee or apply to proceed without prepayment using the correct form (which was provided to him). To date, the plaintiff has done neither.

The May 25 Order further directed the plaintiff, within fourteen days, to file a document with the Clerk which lists each

civil action he has filed while incarcerated or detained in any facility, including the name of the court, the civil action number, and whether the civil action was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. The plaintiff has failed to comply with that portion of the May 25 Order.

The May 25 Order placed the plaintiff on notice that if he failed to comply with this Order, the undersigned would file proposed findings and recommend that the presiding District Judge dismiss this action with prejudice.

On June 20, 2011, the plaintiff filed a notice of motion before the Judicial Panel on Multidistrict Litigation (ECF No. 6) and a motion for total waiver of filing fees under the 24th Amendment (ECF No. 7). He asserts that a class action under Rule 23 is filed and that numerous actions are pending in other districts.

The undersigned proposes that the presiding District Judge **FIND** that the plaintiff has failed to comply with the Order entered May 25, 2011, and that this action is legally frivolous and fails to state a claim upon which relief can be granted. It is respectfully **RECOMMENDED** that this action be dismissed with prejudice, with all pending motions denied.

The plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the

Honorable Thomas E. Johnston, United States District Judge.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to opposing counsel and Judge Johnston.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff.

June 23, 2011
Date


Mary E. Stanley
United States Magistrate Judge